

Part III. Administrative, Procedural, and Miscellaneous

Transactions of Interest

Notice 2009-55

SECTION 1. PURPOSE

This notice provides a list of transactions that have been identified by the Internal Revenue Service as “transactions of interest” for purposes of § 1.6011-4(b)(6) of the Income Tax Regulations and §§ 6111, 6112, 6662A, 6707, 6707A and 6708 of the Internal Revenue Code.

SECTION 2. TRANSACTIONS OF INTEREST

Transactions that are the same as or substantially similar to one of the types of transactions described in the list below have been identified by the Service as “transactions of interest” for purposes of § 1.6011-4(b)(6) and §§ 6111, 6112, 6662A, 6707, 6707A and 6708. Generally, persons entering into these transactions on or after November 2, 2006, must disclose their participation in the transaction as described in § 1.6011-4. Taxpayers who fail to disclose may be subject to penalties under §§ 6662A and 6707A. Material advisors who make a tax statement on or after November 2, 2006, with respect to transactions entered into on or after November 2, 2006, may have disclosure and list maintenance obligations under §§ 6111 and 6112. See § 1.6011-4, and §§ 301.6111-3 and 301.6112-1 of the Procedure and Administration Regulations. Material advisors who fail to disclose or maintain and furnish lists may be subject to penalties under §§ 6707 and 6708, respectively.

(1) Notice 2007-72, 2007-2 C.B. 544 (transactions in which a taxpayer directly or indirectly acquires certain rights in real property or in an entity that directly or indirectly holds real property, transfers the rights more than one year after the acquisition to an organization described in § 170(c), and claims a charitable contribution deduction under § 170 that is significantly higher than the amount that the taxpayer paid to acquire the rights (identified as “transactions of interest” on August 14, 2007));

(2) Notice 2007-73, 2007-2 C.B. 545 (transactions using a grantor trust and

the purported termination and subsequent re-creation of the trust’s grantor trust status, for the purpose of allowing the grantor to claim a tax loss greater than any actual economic loss sustained by the taxpayer or to avoid inappropriately the recognition of gain (identified as “transactions of interest” on August 14, 2007));

(3) Notice 2008-99, 2008-47 I.R.B. 1194 (transactions involving the sale or other disposition of all the interests in a charitable remainder trust (subsequent to the contribution of appreciated assets to and their reinvestment by the trust) resulting in the grantor or other noncharitable recipient receiving the value of that person’s trust interest while claiming to recognize little or no taxable gain (identified as “transactions of interest” on October 31, 2008));

(4) Notice 2009-7, 2009-3 I.R.B. 312 (transactions in which a U.S. taxpayer that owns controlled foreign corporations (CFCs) that hold stock of a lower-tier CFC through a domestic partnership takes the position that subpart F income of the lower-tier CFC or an amount determined under § 956(a) related to holdings of United States property by the lower-tier CFC does not result in income inclusions under § 951(a) for the U.S. taxpayer (identified as “transactions of interest” on December 29, 2008)).

SECTION 3. ADDITIONAL TRANSACTIONS OF INTEREST

For updates to this list go to the IRS web page at www.irs.gov/businesses/corporations and click on “Abusive Tax Shelters and Transactions.” Notices and other published guidance will still be used to identify transactions that have been determined by the Service to be “transactions of interest.”

DRAFTING INFORMATION

The principal author of this notice is Charles D. Wien of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Mr. Wien at (202) 622-3080 (not a toll-free call).

Listed Transactions

Notice 2009-59

SECTION 1. PURPOSE

This notice updates the list of transactions that have been determined by the Internal Revenue Service to be “listed transactions” for purposes of § 1.6011-4(b)(2) of the Income Tax Regulations and §§ 6111, 6112, 6662A, 6707, 6707A, and 6708 of the Internal Revenue Code. This notice restates the list of “listed transactions” in Notice 2004-67, 2004-2 C.B. 600, and updates the list by adding transactions identified as “listed transactions” in notices and other guidance released after September 24, 2004.

SECTION 2. CURRENT LISTED TRANSACTIONS

Transactions that are the same as or substantially similar to one of the types of transactions described in the list below have been determined by the Service to be tax avoidance transactions and are “listed transactions” for purposes of § 1.6011-4(b)(2) and §§ 6111, 6112, 6662A, 6707, 6707A and 6708. As a result, taxpayers may need to disclose their participation in these listed transactions as prescribed in § 1.6011-4, and material advisors may need to disclose these transactions under § 301.6111-3 of the Procedure and Administration Regulations. Taxpayers who fail to disclose may be subject to penalties under §§ 6662A and 6707A. Material advisors who fail to disclose may be subject to penalties under § 6707. In addition, material advisors must maintain lists of advisees and other information with respect to these listed transactions pursuant to § 301.6112-1. Material advisors who fail to furnish a list as required under § 301.6112-1 may be subject to penalties under § 6708.

(1) Rev. Rul. 90-105, 1990-2 C.B. 69 (transactions in which taxpayers claim deductions for contributions to a qualified cash or deferred arrangement or matching contributions to a defined contribution plan where the contributions are attributable to compensation earned by plan participants after the end of